



DEPARTMENT OF THE ARMY
HEADQUARTERS, U.S. ARMY MEDICAL COMMAND
2050 WORTH ROAD
FORT SAM HOUSTON, TEXAS 78234-6000

REPLY TO
ATTENTION OF

MCAA

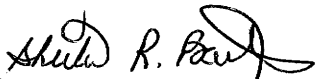
22 DEC 2004

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Policy and Procedures for Proper Use of Non-DOD
Acquisitions for Purchases Greater than the Simplified
Acquisition Threshold

1. Enclosed is the subject policy implementing MEDCOM procedures to use when non-DOD contracts are utilized to meet MEDCOM requirements. As stated in the 29 October 2004 memorandum from the Office of the Secretary of Defense, non-DOD contracts may not be used to circumvent conditions and limitations imposed on the use of funds.
2. The success of this policy requires a team approach from the requirements, financial, and contracting communities. Implementation ensures the proper utilization of non-DOD acquisitions by requiring that MEDCOM dollars sent outside DOD be approved and reported.
3. Our points of contact are Mrs. Charlie Kay Lundy, U.S. Army Medical Command Health Care Acquisition Activity, DSN 471-3443 or Commercial (210) 221-3443 and Mr. Wayne Doyal, Office of the Assistant Chief of Staff Resource Management, DSN 471-7069 or Commercial (210) 221-7069.

Encl


SHEILA R. BAXTER
Brigadier General, U.S. Army
Head of Contracting Activity

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(less: COMMANDER, MRMC)
DIRECTORS, OTSG/MEDCOM PRINCIPAL STAFF



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY MEDICAL COMMAND
HEALTH CARE ACQUISITION ACTIVITY
2107 17TH STREET, SUITE 69
FORT SAM HOUSTON, TEXAS 78234-5069

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22 December 2004

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1. References.

a. Defense Federal Acquisition Regulation Supplement
(DFARS) Interim Rule 2002-D024 (Encl 1).

b. Memorandum, Office of the Secretary of Defense,
29 October 2004, subj: Proper Use of Non-DOD Contracts
(Encl 2).

2. The purpose of this memorandum is to establish policy and procedures for MEDCOM compliance with above references when acquiring medical unique requirements. The Military Departments and Defense Agencies are required to establish procedures for reviewing and approving the use of non-DOD contract vehicles when procuring supplies and services for amounts greater than \$100,000 (current simplified acquisition threshold). Requirements shall not be split in order to remain below the \$100,000 threshold. Non-DOD contracts may not be used to circumvent conditions and limitations imposed on the use of funds, nor any other aspect of DOD procurement law, policy or procedure. This policy applies to any dollars that leave MEDCOM but do not go through a DOD contracting office. This policy does not supersede nor negate any other requirement in DFARS or the Army Federal Acquisition Regulation Supplement (AFARS). The policy is effective 1 January 2005.

3. In order to document and verify MEDCOM non-DOD contracting actions, the following procedures are established. Documentation will be completed and approval of the MEDCOM HCAA Principal Assistant Responsible for Contracting (PARC) obtained prior to release of funds and use of a non-DOD contracting vehicle.

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4. Prior to acquisition, a pre-award review and approval for using non-DOD contracting vehicles is required (Encl 3). A quarterly post-award analytical review of processes and procedures is also required. The MEDCOM requiring activity has primary responsibility to ensure compliance with this policy. The MEDCOM resource management activity shall ensure that the requiring activity provides approved documentation to the MEDCOM HCAA PARC prior to certifying funds are available and appropriate for the procurement action. The MEDCOM HCAA contracting activity shall ensure compliance with the Federal Acquisition Regulation and DFARS competition requirements.

5. Compliance with DOD directives will be ensured by the implementation of the following procedure for pre-award review and approval.

a. **The requiring activity.** Documentation (Encl 3) of the proposed acquisition will be completed by the requiring activity to ensure a bona fide need exists. Requirements will be defined accurately and completely. In addition, the acquisition strategy will address the following.

(1) Requirement. Discuss the scope of the requirement, the scope of the intended vehicle/schedule and how the contract will be administered. State the contract terms and conditions of non-DOD vehicle. Explain why a non-DOD acquisition is contemplated and why a DOD contract vehicle is not appropriate.

(2) Market Research. Include information on market research performed to identify multiple potential sources. If applicable, cite references that would justify using the non-DOD source as more cost effective or in the best interest of the government.

(3) Metrics. Explain the performance metrics that measure service acquisition outcomes against requirements. Document how performance will be measured. For supply items, explain how timely delivery, correct item delivery, and item defects impact activity operation.

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(4) Documentation will be dated and signed at Branch level by the requiring activity and forwarded to the MEDCOM HCAA Center for Health Care Contracting or the appropriate MEDCOM HCAA Regional Contracting Office. The contracting office will process the request and provide feedback to the requiring activity within 5 workdays.

b. The contracting officer will determine whether the use of non-DOD vehicles is in the best interest of DOD by reviewing and documenting the following.

(1) Contracting documentation.

(a) The customer's needs—quality, delivery, price. If price is known to be higher than a DOD contract vehicle, explain what value to the government justifies a higher price. If a shorter lead time with a non-DOD contract vehicle is required, explain impact of delayed delivery.

(b) Competition. Explain how full and open competition will be provided. If other than full and open competition applies to the acquisition, provide an explanation of why and a citation of the statutory authority that allows for other than full and open competition. Plans for competition for any foreseeable follow-on acquisitions should also be addressed.

(c) The scope of the requirements and the scope of the intended vehicle/schedule.

(d) Cost effectiveness including fees and discounts.

(e) Schedule.

(f) Contract administration.

(g) Small business considerations/implications.

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(h) Contract terms and conditions of non-DOD vehicle. The contracting officer will provide additional information on any unique requirements/terms and conditions associated with the acquisition.

(2) If the contracting officer determines that a DOD contracting vehicle is appropriate for acquisition, the decision will be coordinated with the requiring activity.

(3) If the contracting officer determines that a non-DOD contracting vehicle is the appropriate business strategy, the contracting officer will sign and date Pre-Award Review and Approval document and forward to the MEDCOM HCAA PARC office for approval. If contracting officer determination comes after requiring activity's request for a DOD acquisition vehicle, the contracting officer will be responsible for documenting the non-DOD acquisition, obtaining PARC approval, and for providing approved documentation to the resource management activity for tracking purposes.

(4) MEDCOM HCAA PARC approval will be obtained prior to funds certification. HCAA will process the request and approve within 5 workdays.

(5) Approved document will be returned to the contracting officer, who will send approved document to the requesting activity for funds approval.

c. **Resource managers** will review funding requests/funding citations to ensure that the supplies or services to be acquired are consistent with the appropriated funding to be utilized. The resource manager will ensure that PARC approval has been obtained prior to funds certification.

(1) Within 5 workdays of funds certification, a copy of approval document and funds certification will be provided to HQ MEDCOM Resource Management and the MEDCOM HCAA PARC office for tracking and quarterly review of documentation and data.

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(2) Documentation for dollars that go outside of DOD whether by MIPR, support agreement or any other transfer will be forwarded by the resource manager to the supporting MEDCOM HCAA contracting office within 5 days of funds certification. The MEDCOM HCAA contracting office will send documentation to the MEDCOM HCAA PARC office for tracking and inclusion in quarterly review of dollars spent on non-DOD acquisitions.

6. Compliance with DOD directives will be ensured by the implementation of the following procedure for post-award review of the processes and procedures.

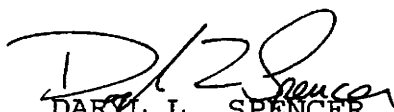
a. Pre-award documentation will be reviewed to determine adequacy of documentation.


b. Post-award documentation will be reviewed to determine the use and effectiveness of the non-DOD contracting vehicles.

c. The contracting and resource management activities will conduct quarterly review of documentation to ascertain dollars spent on non-DOD contracts.

7. HCAA point of contact is Mrs. Charlie Kay Lundy, DSN 471-3443, Commercial (210) 221-3443, or E-mail Charlie.Lundy@cen.amedd.army.mil. OACSRM point of contact is Mr. Wayne Doyal, DSN 471-7069, Commercial (210) 221-7069, or E-mail Wayne.Doyal@cen.amedd.army.mil.

3 Encls


DARYL L. SPENCER
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MEDCOM Assistant Chief
of Staff for Resource
Management


NED STEPHENS, JR.
Lieutenant Colonel, MS
MEDCOM HCAA PARC

MCAA

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Acquisition Threshold

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less: COMMANDER, MPMC
DIRECTORS, OTSG/MEDCOM PRINCIPAL STAFF

CF (w/encls):

MEDCOM HCAA CONTRACTING CENTER/OFFICES

Approval of Service Contracts and Task Orders
DFARS Case 2002-D024
Interim Rule

PART 237—SERVICE CONTRACTING

* * * * *

SUBPART 237.1—SERVICE CONTRACTS—GENERAL

[237.170 Approval of contracts and task orders for services.

237.170-1 Scope.

This section—

(a) Implements 10 U.S.C. 2330; and

(b) Applies to services acquired for DoD, regardless of whether the services are acquired through—

(1) A DoD contract or task order; or

(2) A contract or task order awarded by an agency other than DoD.

237.170-2 Prohibition on acquisition of services.

Unless approval is obtained in accordance with 237.170-3, do not acquire services through use of a contract or task order that—

(a) Is not performance based; or

(b) Is awarded by an agency other than DoD.

237.170-3 Approval requirements.

(a) *Acquisition of services through a DoD contract or task order that is not performance based.*

(1) For acquisitions at or below \$50,000,000, obtain the approval of the official designated by the department or agency.

(2) For acquisitions exceeding \$50,000,000, obtain the approval of the senior procurement executive.

(b) *Acquisition of services through any contract or task order awarded by an agency other than DoD. Obtain approval in accordance with department or agency procedures.]*



OFFICE OF THE SECRETARY OF DEFENSE

1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000



MEMORANDUM FOR: SEE DISTRIBUTION

OCT 29 2004

SUBJECT: Proper Use of Non-DoD Contracts

Each year billions of Department of Defense (DoD) dollars are spent using non-DoD contracts to procure supplies and services. In many cases this represents an effective way to accomplish acquisitions in support of DoD's mission. For this reason, the use of non-DoD contracts is encouraged when it is the best method of procurement to meet DoD requirements. However, recent DoD and General Services Administration Inspector General reports identified several issues associated with the Department's use of non-DoD contracts for the acquisition of certain supplies and services. Non-DoD contracts may not be used to circumvent conditions and limitations imposed on the use of funds, nor are they a substitute for poor acquisition planning.

Military Departments and Defense Agencies must establish procedures for reviewing and approving the use of non-DoD contract vehicles when procuring supplies and services on or after January 1, 2005, for amounts greater than the simplified acquisition threshold. This requirement applies to both direct (*i.e.* orders placed by DoD) and assisted acquisitions (*i.e.* contracts awarded or orders placed by non-DoD entities, including franchise funds, on behalf of DoD), using DoD funds. These procedures must include:

- evaluating whether using a non-DoD contract for such actions is in the best interest of the DoD. Factors to be considered include:
 - satisfying customer requirements;
 - schedule;
 - cost effectiveness (taking into account discounts and fees); and
 - contract administration (including oversight);
- determining that the tasks to be accomplished or supplies to be provided are within the scope of the contract to be used;
- reviewing funding to ensure it is used in accordance with appropriation limitations;
- providing unique terms, conditions and requirements to the assisting agency for incorporation into the order or contract as appropriate to comply with all applicable DoD-unique statutes, regulations, directives and other requirements, (*e.g.* the requirement that all clothing procured with DoD funding be of domestic origin); and
- collecting data on the use of assisted acquisitions for analysis.

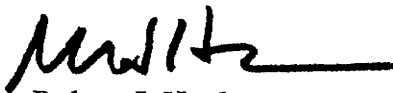


This new policy satisfies the requirements of Section 2330(b)(1)(C)(ii) of Title 10, United States Code as amended by Section 801 of the National Defense Authorization Act for Fiscal Year 2002. Section 801 requires advance approval to buy services via use of a "contract entered into or a task order issued, by an official of the United States outside of the DoD." Although Section 801 applies only to the procurement of services, we are applying this requirement to supplies in order to achieve consistency and discipline in the DoD acquisition process. The Defense Acquisition Regulation Council will issue coverage for the Defense Federal Acquisition Regulation Supplement that is consistent with the requirements of this memorandum.

The use of multiple award contracts must be consistent with the requirements of Section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Competition Requirements for Purchase of Services Pursuant to Multiple Award Contracts); Federal Acquisition Regulation (FAR) Part 8.002 (Priorities for Use of Government Supply Sources); FAR Part 17.5 (Interagency Acquisitions under the Economy Act); FAR Part 7(Acquisition Planning); and DoD Instruction 4000.19 (Interservice and Intragovernmental Support).

While the Program Manager or requirements official has primary responsibility to ensure compliance with this policy, success will not be achieved without a team approach and specific support from the financial management and contracting communities. For example, the financial management community shall: (1) ensure the program manager or other appropriate individual has certified that the procedures established by the Military Department or Defense Agency have been followed and (2) ensure that funds are available and appropriate for the procurement action.

Please ensure widest dissemination of this memorandum and the procedures you establish. It is imperative that when non-DoD contracts are utilized to meet DoD requirements, they are utilized properly. The point of contact on this matter is Mr. Michael Canales. He can be reached at (703) 695-8571 or via email at michael.canales@osd.mil.



Robert J. Henke
Principal Deputy Under Secretary
of Defense (Comptroller)



Michael W. Wynne
Acting Under Secretary of Defense
(Acquisition, Technology, and Logistics)

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DIRECTORS OF THE DOD FIELD ACTIVITIES**

FORMAT
Pre-Award Review and approval
Non-DOD Contracts

I. Statement of Requirement (include non-DOD contracting vehicle to be used and terms and conditions of non-DOD contracting vehicle).

II. Market Research results.

III. Metrics.

Requirements POC Name/Date

IV. Additional information from contracting officer.

Name/Date
MEDCOM Contracting Officer

Approval:

Name/Date
MEDCOM HCAA Principal Assistant
Responsible for Contracting